

West Fork Energy, Inc. and P. & A Coal, Inc. and International Union, United Mine Workers of America and its District 28. Cases 11-CA-12749 and 11-CA-12914

December 18, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

Upon a charge filed by the Union on June 6, 1988, and amended on July 28, 1988, in Case 11-CA-12749, the General Counsel of the National Labor Relations Board issued a complaint on July 21, 1988, against West Fork Energy, Inc., alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. On August 5, 1988, West Fork Energy filed an answer to the complaint, admitting in part, and denying in part, the allegations of the complaint.

Upon a charge filed by the Union on August 26, 1988, and amended on September 27 and October 14, 1988, in Case 11-CA-12914, the General Counsel issued a consolidated complaint on October 24, 1988, against West Fork Energy, Inc. and William P. Harris, personally, alleging that they have violated Section 8(a)(1) and (5). On November 9, 1988, West Fork Energy and William P. Harris filed an answer to the consolidated complaint, admitting in part, and denying in part, the allegations of the consolidated complaint and stating affirmative defenses.

On March 1, 1989, the Regional Director issued an order withdrawing the consolidated complaint and conditionally approving the Union's request to withdraw the charges based on a non-Board settlement. On April 22, 1991, the Regional Director informed West Fork Energy that he was revoking the approval of the non-Board settlement due to West Fork Energy's failure to comply with its terms. The Regional Director also advised West Fork Energy that he was reinstating the consolidated complaint.

On August 16, 1991, the General Counsel issued an amended consolidated complaint¹ against West Fork Energy, Inc. and P. & A. Coal, Inc., the Respondents, alleging that they have violated Section 8(a)(1) and (5). On August 23, 1991, Respondents filed a motion to continue the hearing date asserting that William P. Harris was in the hospital and unable to assist in preparing a defense and that Respondents planned to file for bankruptcy protection. The Respondents did not file an answer to the amended consolidated complaint. On August 28, 1991, the associate chief administrative law judge issued an order postponing the hearing.

¹ The Union filed a second amended charge in Case 11-CA-12749 and a third amended charge in Case 11-CA-12914 on August 9, 1991.

On September 23, 1991, the General Counsel filed a Motion for Summary Judgment. On October 4, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

In the Motion for Summary Judgment, the General Counsel contends that Respondents have failed to file any answer to the amended consolidated complaint and that under Section 102.20 of the Board's Rules and Regulations the Board should find the allegations of that complaint to be true and should issue an order based on these findings. However, as the Motion for Summary Judgment correctly sets forth, an answer was filed by Respondent West Fork Energy to the original complaint and the consolidated complaint.

In *Chrissy Sportswear*, 304 NLRB 988 (1991), the Board stated that an answer to a complaint is not revived where: (1) the parties subsequently enter into a settlement agreement; (2) the settlement agreement is breached; (3) the original complaint allegations are renewed in a consolidated complaint; and (4) no timely answer is filed to the consolidated complaint. See, e.g., *Orange Data, Inc.*, 274 NLRB 1018 (1985). *Orange Data, Inc.*, however, involved an informal Board settlement agreement approved by the Regional Director under Form NLRB-4775. This form specifically states that approved settlement agreements withdraw outstanding complaints and answers.

In this case, a non-Board adjustment settled the matters which gave rise to the issuance of the consolidated complaint, and the Region's withdrawal of the consolidated complaint made no reference to answers previously filed by Respondent West Fork Energy. Under these circumstances,² we find that the answers to the complaint and consolidated complaint survive the breached settlement agreement and subsequent unanswered amended consolidated complaint. See, e.g., *Frate Service*, 255 NLRB 163 (1981); *Nottingham Restaurant*, 243 NLRB 567 (1979); *WUSS Radio*, 236 NLRB 1529 (1978), which the Board specifically held

² We also observe that the amended consolidated complaint's allegations are substantively unchanged from allegations contained in the original and consolidated complaints. The only significant change is that the amended consolidated complaint deletes Harris and adds P. & A. Coal, Inc. as a respondent. In this regard, because P. & A. Coal, Inc. and West Fork Energy are alleged to constitute a single employer, the answers filed by West Fork Energy suffice to preclude entry of summary judgment against P. & A. Coal, Inc. *Caribe Cleaning Services*, 304 NLRB 932 fn. 3 (1991); *SFS Painting & Drywall*, 303 NLRB 495 (1991).

in *Orange Data* were not overruled. See 274 NLRB at 1019 fn. 4.

Both answers denied the commission of any unfair labor practices and the second answer asserted affirmative defenses. Having found that these answers survived the breached settlement agreement and the subsequent unanswered amended consolidated complaint, we shall deny the General Counsel's Motion for Summary Judgment.

ORDER

It is ordered that General Counsel's Motion for Summary Judgment is denied.

IT IS FURTHER ORDERED that the above-entitled proceeding is remanded to the Regional Director for Region 11 for further appropriate action.